OOI BEE TAT

v.

TAN AH CHIM & SONS SDN. BHD. & ANOR & ANOTHER APPEAL

COURT OF APPEAL, KUALA LUMPUR
TAN SRI DATO' HJ. ANUAR BIN DATO' HJ. ZAINAL ABIDIN CJ (MALAYA)
DATO' WAN ADNAN B. ISMAIL FCJ
DATO' DR. ZAKARIA M. YATIM JCA
[CIVIL APPEALS NOS. 02-488-1992, 02-489-1992]
8 NOVEMBER 1995

PRACTICE & PROCEDURE: *Filing - Record of appeal - Extension of time - Whether good reasons shown - Rules of the Supreme Court 1980 O. 62(7).*

PRACTICE & PROCEDURE: *Filing - Record of appeal - Extension of time - Appeal to Supreme Court - Proper authority to grant extension - Whether lies only with the Supreme Court or Judge of that Court - Deputy Registrar refusing application for extension of time upon alleged breach of a Practice Direction - Whether proper - Rules of the Supreme Court 1980 O. 62(7).*

PRACTICE & PROCEDURE: *Practice Directions - Compliance - Whether clothed with statutory force - Whether only having administrative authority - Whether of the same nature as the Standing Orders relating to Judicial Proceedings in the House of Lords.*

This was an application by the appellant in Appeal No. 489-1992 for an extension of time to file the record of appeal after the six-week period provided for such filing by O. 62(7) Rules of the Supreme Court, had expired. The facts were that on 24 October 1992, the appellant had filed a notice of appeal against the judgment entered against them by the High Court at Penang. By Practice Directions No. 5/1990 and No. 2/1991, the appellant had one week, after the filing of the said notice, to request for the notes of evidence. The appellant, however, did not comply with the directive in the Practice Directions, and only made the request some 25 days later. On 23 November 1992 the Secretary to the learned Judge wrote to the appellant informing him that the notes were in the process of being prepared. In view of the late delivery of the notes, on 28 November 1992, the appellant applied to the Senior Assistant Registrar for an extension of time to file the record of appeal. This application was refused on the ground that the appellant had breached the directive of the aforesaid Practice Directions.

On 21 December 1992, some eight weeks after the date of the filing of the notice of appeal, the appellant filed the present application and again sought for an extension of time to file the record of appeal in question. Before the Supreme Court the appellant *inter alia* argued that the Registrar was in error when rejecting the application, as Practice Directions had no statutory authority, and therefore, cannot be taken as direction of the Court under s. 84 of the Supreme Court Act 1981.

Held:

Per Zakaria M. Yatim JCA (delivering the judgment of the Court):

[1] Practice Notes or Practice Directions do not have statutory force and cannot be equated with the Standing Orders relating to the judicial proceedings in the House of Lords. Practice Directions are intended to be no more than a direction for administrative purpose. In the event, when the Deputy Registrar refused the extension of time, she was merely carrying out an administrative duty pursuant to the relevant Practice Direction.

[2] Under O. 62(7) Rules of the Supreme Court 1980, the authority empowered to grant an extension of time is the Court. Section 2 of the Rules defines "Court" to mean the Supreme Court or a Judge of that Court. Therefore any application for extension of time to file the record of appeal must be made to the Supreme Court or to the Judge of that Court.

[3] Under O. 62(7) Rules of the Supreme Court the memorandum and record of appeal shall be filed at the place where the appeal was entered within six weeks after the entry of the appeal or within such further time as the Court may allow. However in order to justify a Court to extend time there must be some material upon which the Court can exercise its discretion.

[4] In the present case, the materials before the Court did not justify it to exercise its discretion to grant the extension. The appellant knew that there was a lengthy trial and that the Secretary would take sometime for the notes to be typed. Yet the appellant did not deem it fit to apply for extension of time then. It was not diligent enough of the appellant to wait until after the expiry of the six weeks period before making the application.

[Application dismissed with costs].

[**Bahasa Malaysia** Translation of Headnotes]

AMALAN & PROSEDUR: *Pemfailan - Rekod rayuan - Perlanjutan masa - Samada alasan-alasan yang baik ditunjukkan - Kaedah-kaedah Mahkamah Agung 1980 A. 62(7).*

AMALAN & PROSEDUR: *Pemfailan - Rekod rayuan - Perlanjutan masa - Rayuan kepada Mahkamah Agung - Kuasa yang wajar untuk memberikan perlanjutan - Samada hanya bergantung pada Mahkamah Agung atau Hakim Mahkamah tersebut - Timbalan Pendaftar menolak permohonan untuk perlanjutan masa kerana kemungkiran Arahan Amalan - Samada wajar - Kaedah-kaedah Mahkamah Agung 1980 Aturan 62(7).*

AMALAN & PROSEDUR: *Arahan Amalan - Pematuhan - Samada mempunyai kuasa berkanun - Samada hanya mempunyai kuasa pentadbiran - Samada mempunyai sifat yang sama dengan Peraturan-Peraturan Majlis Mesyuarat berhubung dengan Prosiding-Prosiding Kehakiman dalam Dewan Pertuanan.*

Ini merupakan satu permohonan oleh perayu dalam Rayuan No. 489-1992 untuk perlanjutan masa bagi memfailkan rekod rayuan selepas tempoh selama enam minggu yang diperuntukkan bagi pemfailan yang sedemikian melalui A. 62(7) Kaedah-kaedah Mahkamah Agung, telah luput. Fakta-faktanya adalah bahawa pada 24 Oktober 1992, perayu telah memfailkan notis rayuan terhadap penghakiman yang dimasukkan terhadap mereka oleh Mahkamah Tinggi di Pulau Pinang. Menurut Arahan Amalan No. 5/1990 dan No. 2/1991, perayu mempunyai satu minggu selepas pemfailan notis tersebut, untuk meminta nota-nota keterangan. Perayu, namun begitu tidak mematuhi arahan dalam Arahan-arahan Amalan tersebut, dan hanya membuat permintaan berkenaan 25 hari kemudiannya. Pada 23 November 1992 Setiausaha kepada Hakim yang bijaksana telah menulis kepada perayu memaklumkan bahawa nota-nota tersebut sedang dalam proses penyediaan. Memandangkan kelewatan penghantar-serahan nota-nota tersebut, pada 28 November 1992, perayu telah memohon kepada Penolong Kanan Pendaftar untuk perlanjutan masa untuk memfailkan rekod rayuan. Permohonan ini telah ditolak atas alasan bahawa perayu telah memungkiri arahan-arahan yang terdapat dalam Arahan Amalan yang tersebut di atas.

Pada 21 Disember 1992, lebih kurang lapan minggu selepas tarikh pemfailan notis rayuan, perayu telah memfailkan permohonan semasa ini dan sekali lagi memohon satu perlanjutan masa untuk memfailkan rekod rayuan yang dipersoalkan ini. Di hadapan Mahkamah Agung, perayu telah, antara lainnya, berhujah bahawa Pendaftar telah membuat kesilapan ketika menolak permohonan tersebut, kerana Arahan Amalan tidak mempunyai kuasa berkanun, dan dengan itu tidak boleh dianggap sebagai arahan Mahkamah di bawah s. 84 Akta Mahkamah Agung 1981.

Diputuskan:

Oleh Zakaria M. Yatim HMR (menyampaikan penghakiman Mahkamah):

[1] Nota-nota Amalan dan Arahan Amalan tidak memaksa secara berkanun dan tidak boleh dipersamakan dengan Peraturan-peraturan Majlis Mesyuarat berhubung dengan prosiding-prosiding kehakiman dalam Dewan Pertuanan. Arahan-arahan Amalan adalah bertujuan sebagai satu arahan bagi tujuan pentadbiran. Timbalan Pendaftar, apabila menolak perlanjutan masa, hanyalah menjalankan suatu kewajipan pentadbiran selaras dengan Arahan Amalan berkaitan.

[2] Di bawah A. 62(7) Kaedah-kaedah Mahkamah Agung 1980, autoriti yang telah diberi kuasa untuk memberikan perlanjutan masa adalah Mahkamah. Seksyen 2 Kaedah tersebut mentakrifkan "Court" (Mahkamah) sebagai bermaksud Mahkamah Agung atau seorang Hakim dari Mahkamah itu. Dengan itu apa-apa permohonan untuk perlanjutan masa bagi memfailkan rekod rayuan haruslah dibuat kepada Mahkamah Agung atau kepada Hakim Mahkamah itu.

[3] Di bawah A. 62(7) Kaedah-kaedah Mahkamah Agung memorandum dan rekod rayuan hendaklah difailkan di tempat di mana rayuan tersebut telah dimasukkan dalam tempoh enam minggu selepas kemasukan rayuan tersebut atau dalam tempoh yang selanjutnya sepertimana yang dibenarkan oleh Mahkamah. Walaubagaimana pun untuk mewajarkan sesebuah Mahkamah melanjutkan masa, haruslah terdapat bahan di atas mana Mahkamah boleh melaksanakan budibicaranya.

[4] Dalam kes semasa ini, bahan-bahan di hadapan Mahkamah tidak mewajarkan Mahkamah untuk melaksanakan budibicaranya bagi memberikan perlanjutan masa. Perayu mengetahui bahawa terdapatnya perbicaraan yang panjang lebar dan bahawa Setiausaha akan mengambil sedikit masa untuk menaip nota-nota tersebut. Tetapi perayu masih tidak menganggapkannya sesuai untuk memohon perlanjutan masa ketika itu. Ianya agak tidak cukup teliti bagi perayu menunggu sehingga selepas luputnya tempoh enam minggu itu sebelum membuat permohonan.

[Permohonan ditolak dengan kos].

Cases referred to:

Hume v. Somerton [1890] 25 QBD 239 ***(foll)***
Langton v. Llyods Bank [1960] 1 AMER 657 ***(foll)***
Warinco AG v. Samor PA [1979] 2 All ER 64 ***(refd)***
Jayasankaran v. Public Prosecutor [1983] 1 MLJ 379 ***(refd)***
Ratnam v. Cumarasamy & Anor. [1965] 31 MLJ 228 ***(refd)***

Legislation referred to:

Administration of Justice (Appeals) Act 1935 (UK)
Administration of Justice Act 1969 (UK)
Appellate Jurisdiction Acts 1876, 1887 (UK)

Judicature (Northern Ireland) Act 1978
Rules of the High Court
Supreme Court Act 1981, O. 62(7), s. 84

Other source referred to:
Supreme Court Pratice, 1993, Vol. 2, pp. 161, 1513 & para. 701

In Appeal No. 02-488-92
For the appellants - Cecil Abraham (J.A. Yeoh with him); M/s. Shearn Delamore & Co.
In Appeal No. 02-489-92
For the appellant - Lim Kean Siew (Dr. Jagjit Singh Sidhu with him); M/s. Lim Kean Siew & Co
For the respondents - C.V. Das; M/s. Presgrave & Matthews

JUDGMENT

Zakaria M. Yatim JCA:

There were three notices of motion which the Court had to decide before hearing the appeals in Civil Appeal No. 02-488 of 1992 and Civil Appeal No. 02-489-1992.

In the first notice of motion the appellant, in 488 of 1992 sought the leave of the Court to file a supplementary record of appeal to include several documents which were not included in the original record of appeal. The respondents did not object to the application and the Court accordingly made an order in terms of the application.

In the second notice of motion, the appellant in 489 of 1992 applied for an extension of time to file the record of appeal after the expiry of the six weeks pursuant to O. 62(7) of the Rules of the Supreme Court, 1980. In the third notice of motion, the respondents in 489 of 1992 applied for an order that the notice of appeal filed by the first appellant on 24 October 1992 be struck out with costs. The second and third notices of motion were interrelated and we decided to hear them together.

The affidavit in support of the appellant's application for extension of time was affirmed by Dr. Jagjit Singh Sidhu on behalf of the appellant. In the affidavit the deponent averred that the learned trial Judge Edgar Joseph Jr. (as he then was) entered judgment in Pulau Pinang Civil Suit No. 449 of 1981 against the appellant on 12 October 1992. The appellant filed notice of appeal against the decision of the learned Judge on 24 October 1992 which was well within the time specified under the Supreme Court Rules. The deponent said that the time limited for requesting the notes of evidence was one week from the date of the filing of the notice of appeal. The deponent however admitted that the request was not made until 18 November 1992. The deponent said that the "reasons why we were late for requesting the notes of evidence was due to inadvertence and under the mistaken impression that the said request was to be made within (1) week of the expiry of the one (1) month from the filing of the notice of appeal." On 27 November 1992, the appellant's solicitors received a letter from the secretary to the learned Judge informing them that the notes of evidence were in the process of being prepared and would be sent to them when they were completed. The deponent further averred that on 28 November 1992, the appellant's solicitors formally applied to the Senior Assistant Registrar for an extension of time to file the appellant's record of appeal on the grounds that they were awaiting the notes of evidence. On 18 December 1992, the appellant's solicitors received a letter from the Deputy Registrar of the Supreme Court dated 9 December 1992 informing them that their application for extension of time had been refused on the grounds that their request for the notes of evidence had been delayed.

Mr. Ooi Kim Keat, in his affidavit in support of the third notice of motion averred that the Deputy Registrar had rejected the application of the appellant's solicitors for extension of time to file the appeal record because the appellant had failed to comply with Practice Direction No. 2/91 based on the ground that the letter to the secretary to the learned Judge requesting for the notes of evidence had been made more than one week from the filing of the notice of appeal. The deponent stated that the application for the notes of evidence was only made by the appellant's solicitors more than 25 days after the notice of appeal was filed and was not in accordance with the said Practice Direction. The deponent further said that the appellant had no good ground to explain the delay to request for the notes of evidence from the secretary to the learned Judge.

The respondents referred to the Deputy Registrar's letter dated 9 December 1992 and contended that the appellant's application for extension of time to file the appeal record did not comply with Practice Direction 2 of 1991. The letter reads as follows:

> T/n Lim Kean Siew & Co.
> Peguambela & Peguamcara
> Tkt. 5, Wisma Penang Garden
> No. 42 Jalan Sultan Ahmad Shah
> 10050 Pulau Pinang
>
> Tuan
>
> **Mahkamah Agung Rayuan Sivil No. 02-489-92**
> **(Mah. Tinggi P. Pinang G. Sivil No. 449/91)**
> **Tan Ah Chim & Sons Sdn. Bhd. - Perayu dan**
> **Ooi Bee Tat & 1 Lagi - Penentang**
>
> Surat tuan bertarikh 28 November 1992 adalah dirujuk.
>
> Adalah dimaklumkan bahawa permohonan tuan untuk mendapatkan perlanjutan masa memfailkan rekod rayuan adalah ditolak kerana tidak mematuhi Nota Amalan 2/91.
>
> (a) Surat memohon nota keterangan daripada Setiausaha dibuat lewat iaitu lebih dari satu minggu dari tarikh notis rayuan difailkan.
>
> Oleh itu jika tuan masih berminat untuk meneruskan rayuan ini tuan dikehendaki memfailkan secara notis usul.
>
> Sekian dimaklumkan.
>
> Berkhidmat untuk Negara
>
> Saya yang menurut perintah
>
> T/tangan
>
> Timbalan Pendaftar
> Mahkamah Agung
> Kuala Lumpur

It is not in dispute that the notice of appeal was filed by the appellant on 24 October 1992. The respondents said that on 18 November 1992 the appellant's solicitors wrote to the secretary of the learned trial Judge for the notes of evidence. The respondents therefore contended that the appellant had applied for the notes of evidence more than one week after the filing of the notice of appeal. Practice Direction 5 of 1990 states as follows:

> (1) Dalam tempoh satu minggu dari tarikh notis rayuan difailkan, perayu hendaklah memohon kepada setiausaha hakim perbicaraan untuk dibekalkan satu salinan terperaku nota keterangan, melalui surat seperti berikut.

Mr. Lim Kean Siew submitted that practice notes had no statutory authority. He referred to paragraph 701 of the *Supreme Court Practice* 1993, Vol. 2 page 161, where the learned authors state the Practice Masters Rules or Directions have no statutory authority and cannot be treated as the direction of the Court Order under s. 84 of the Supreme Court Act 1981. The learned authors cited *Hume v. Somerton* [1890] 25 QBD 239 at page 243; and *Langton v. Llyods Bank* [1960] 1 AMER 657 in support of the proposition. We agree with what is stated in the White Book.

Mr. Cyrus Das, Counsel for the respondents cited *Warinco AG v. Samor PA* [1979] 2 All ER 64. In that case Lord Edmund-Davies in his speech on behalf of the appeal committee of the House of Lords said:

> But I think it is right to point out that it is as a matter of indulgence that we have allowed the merits to be gone into at all, because this is a petition which is 6½ months out of time. A wholly inadequate attempt has been made to explain the delay. The excuses offered, even when taken at their face value, explain some 3½ months only of the delay which has occurred, leaving a substantial period of time wholly unexplained.
>
> Laxity in relation to compliance with standing orders is increasing and it must be curbed. Earlier this year, in February, in another case quite unrelated to the present one, the noble and learned Viscount Dilhorne said in words that we respectfully adopt:
>
> > The standing orders of this House are meant to be complied with. There are very experienced firms of solicitors acting on both sides, and there is a great deal of money involved. The standing orders of this House really cannot be treated as if they meant nothing, so that the parties can ignore them. The fact that there is no excuse for it is a matter we shall have to consider.
>
> We have considered the non-compliance in this case very carefully, and we want it to become known that laxity of this kind will not be tolerated.

We are of the view that the standing orders referred to in the above judgment are not the same as Practice Notes or Practice Directions. According to the *Supreme Court Pratice,* 1993, Vol. 2, page 1513 the standing orders relating to the Judicial Proceedings in the House of Lords are made pursuant to the relevant acts, and are agreed to, on motion, by the House itself. The relevant Acts are the Appellate Jurisdiction Acts 1876, 1887; the Administration of Justice (Appeals) Act 1935; the Administration of Justice Act 1969 and the Judicature (Northern Ireland) Act 1978. The standing orders are therefore similar to what we generally call subsidiary legislation in this country and have the same status as the Rules of the Supreme Court, or the Rules of the High Court.

In the present case, when the Deputy Registrar refused the extension of time she was merely carrying out an administrative duty pursuant to the Practice Direction. Practice Directions are intended to be no more than a direction for administrative purpose. *Jayasankaran v. Public Prosecutor* [1983] 1 MLJ 379 @ 380. Under O. 62(7) the authority empowered to grant an extension of time is the Court. Section 2 of the Rules defines "Court" to mean the Supreme Court or a Judge of that Court. Therefore any application for extension of time to file the record of appeal must be made to the Supreme Court or the Judge of that Court. Order 62(7) provides that the memorandum and record of appeal shall be filed at the place where the appeal was entered within six weeks after the entry of the appeal or within such further time as the Court may allow.

The present application for extension of time was filed on 21 December 1992 that is more than eight weeks after the date of the filing of the notice of appeal. On 23 November 1992, the secretary to the learned Judge wrote to the appellant's solicitors that she was

still typing the notes of evidence. The appellant knew that there was a lengthy trial and that the secretary would take some time to type the notes of evidence. Yet the appellant did not deem it fit to apply to this Court for extension of time. The appellant waited until after the expiry of the six weeks period to make the present application.

Under O. 62(7) the Court has the discretion to grant an extension of time to file the record of appeal. The appellant may even file the application after the expiry of the six-week period provided it has good reasons for doing so. In the present case the appellant knew that it would take sometime for the notes of proceedings to be typed. It was not diligent enough to file the application upon receiving the letter from the secretary to the learned Judge dated 23 November 1992.

In *Ratnam v. Cumarasamy & Anor.* [1965] 31 MLJ 228, the Privy Council (on an appeal from the Court of Appeal of the Federation of Malaya) said in its judgment at page 229, that the "Rules of Court must *prima facie* be obeyed, and in order to justify a Court in extending the time there must be some material upon which the Court can exercise its discretion..."

In the present case, the materials before us did not justify us to exercise our discretion to grant the extension. Indeed, Dr. Sidhu admitted in his affidavit that the delay was due to the inadvertance and mistake of the appellant's solicitors. For the reasons stated above, we dismissed the appellant's application with costs.